

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

ANTHONY THOMAS,

Debtor.

CASE NO.: 18-10042-KKS
CHAPTER: 7

SHARRON CHIAPPETTA,

ADV. NO.: 18-01006-KKS

Plaintiff,

v.

ANTHONY THOMAS,

Defendant.

ORDER DISMISSING ADVERSARY PROCEEDING

THIS ADVERSARY PROCEEDING came before the Court for a scheduled trial on February 4, 2020. On January 10, 2020, Defendant requested that this Court dismiss this Adversary Proceeding.¹ In an order dated February 3, 2020, the Court reserved ruling on Defendant's request for dismissal to the commencement of the trial.² Plaintiff filed a

¹ *Anthony Thomas' Objection to Continue Trial and Motion for Summary Judgment* ("Objection and Motion," Doc. 67).

² *Order Overruling Defendant, Anthony Thomas' Objection to Continue Trial and Denying Defendant's Motion for Summary Judgment* (Doc. 80).

Notice of Voluntary Dismissal (“Dismissal Notice”) on January 29, 2020.³

For the reasons stated on the record and as further articulated below, the Adversary Proceeding is due to be dismissed, with prejudice.

Plaintiff’s Dismissal Notice is procedurally deficient. Pursuant to Fed. R. Civ. P. 41(a), made applicable by Fed. R. Bankr. P. 7041, a notice is only sufficient to dismiss an adversary proceeding if: 1) the opposing party has not yet served an answer or motion for summary judgment; or 2) the notice is accompanied by a “stipulation of dismissal signed by all parties who have appeared.”⁴ Here, Defendant filed an answer and a motion for summary judgment.⁵ Plaintiff’s Dismissal Notice was not accompanied by a stipulation signed by all parties, so the requirements of Rule 41(a) were not met.

Due to Plaintiff’s failure to prosecute this adversary proceeding, involuntary dismissal pursuant to Fed. R. Civ. P. 41(b), applicable by Fed. R. Bankr. P. 7041, is appropriate.⁶ Plaintiff has delayed trial time and

³ Doc. 73.

⁴ Fed. R. Civ. P. 41(a).

⁵ Docs. 33 and 67.

⁶ Fed. R. Civ. P. 41(b), made applicable by Fed. R. Bankr. P. 7041 (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. ...”).

again, mostly under the guise of working toward a settlement with Defendant. After the Court declined to approve the settlement proposed by Plaintiff, and as the Court-imposed trial date drew closer, Plaintiff again moved for a continuance of the trial.⁷ When the Court denied that motion for continuance, Plaintiff filed the Dismissal Notice.

The Court considered dismissal of this proceeding on multiple occasions.⁸ Because both parties now request dismissal, it is appropriate to dismiss this Adversary Proceeding, with prejudice.

For the reasons stated, it is

ORDERED:

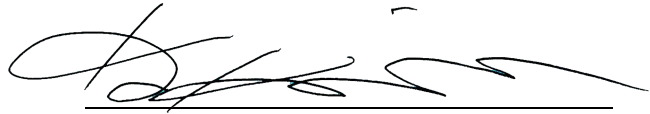
1. This Adversary Proceeding is **DISMISSED**, with prejudice. Each party is to bear its own costs and attorneys' fees.

⁷ Doc. 69.

⁸ *Order to Show Cause [sic] why this Adversary Proceeding Should not be Dismissed for Failure to Comply with Order Canceling Status Conference and Setting Deadline for Defendant to Serve and File Response to Complaint*, Doc. 23, p. 3. (giving Defendant twenty-one (21) days to respond to the Complaint, failing which the case may be dismissed); *Amended Order to Show Cause why this Adversary Proceeding should not be Dismissed for Failure to Appear at Court Scheduled Hearing*, Doc. 52, ¶ 2. (cautioning Plaintiff and her counsel that if no one appeared for a continued hearing, the Adversary Proceeding may be dismissed without further notice or hearing); *Order Scheduling Trial and Setting Deadlines for Discovery and Dispositive Motions*, Doc. 60, ¶ 5. (“Any party, whether unrepresented or through counsel, that fails to comply with this Order risks dismissal of this proceeding or entry of an adverse judgment.”); *Order Overruling Defendant, Anthony Thomas’ Objection to Continue Trial and Denying Defendant’s Motion for Summary Judgment*, Doc. 80, ¶ 2. (the Court would consider Defendant’s request for dismissal at the February 4, 2020 trial).

2. This Order shall be final immediately upon entry, after which the Clerk may close this Adversary Proceeding.

DONE and ORDERED on February 20, 2020.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: All interested parties, including
Anthony Thomas
5200 NW 43rd Street
#102-378
Gainesville, FL 32606